IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) No.2409 of 2006

Commissioner of Income Tax
Chennai. .. Appellant /Appellant

Vs

Kumararani Smt.Meenakshi Achi
Chettinad House
Rajah Annamalaipuram
Chennai-600 028. .. Respondent/ Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai dated 17.3.2006 made in I.T.A.No. 2031/Mds/2003 for the assessment year 1995-96 against the order of the Commissioner of Income Tax (Appeals) V Chennai dated 23.9.1998 in I.T.A.No.16/98-99 against the order of the Deputy Commissioner of Income Tax, Special Range I, Chennai dated 24.3.98 in 702-M/95-96.

For Appellant : Mrs.Pushya Sitaraman

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

This appeal is directed against the order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai dated 17.3.2006 made in I.T.A.No.2031/Mds/2003 for the assessment year 1995-96.

2.1. The facts of the case, in brief, are that the assessee along with other three co-owners sold the land situated at Adayar, Raja Annamalaipuram, Chennai bearing R.S.No.4291/1 and 4294/1 to the extent of 43 grounds and 845 sq.ft. The assessee had 9/16th share and the sale consideration received to the extent of her

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share was Rs.6,85,28,195/- during the relevant assessment year. For the capital gain purpose, the assessee has taken the value of the property as on 1.4.1981 at Rs.2,86,000/- per ground based on the report of the valuer, but the Assessing Officer, based on the wealth tax assessment of one of the co-owners for the year 1992-93, wherein the neighbouring property was valued at Rs.60,000/- considered the value of the property sold as on 1.4.1981 at Rs.70,000/- per ground as fair and reasonable and accordingly, he computed the long term capital gain.

2.2. On appeal by the assessee, the Commissioner of Income Tax (Appeals), deleted the addition made to the capital gains by the Assessing Officer and substituted the value taken by the assessee on the basis of value estimated by the Registered Valuer, viz., at Rs.2,86,000/-.

2.3. Exasperated by the order of the Commissioner of Income Tax (Appeals), the Revenue filed an appeal before Tribunal. The Tribunal, after taking note of the order of the Commissioner of Income Tax, with respect to a co-owner of the land, dropping the proceedings initiated under Section 263 of the Income Tax Act and accepting the value adopted at Rs.2,86,000/- per ground as on 1.4.1981 while arriving at the capital gains assessable for the year 1995-96; and the ratio laid down in Jaswant Rai v. CWT, [1977] 107 ITR 477 that differential treatment cannot be met out to another co-owner while making the assessment of the same property or while valuing the same property, held that the value of the land taken by the assessee based on the valuation report of the Registered Valuer at Rs.2,86,000/- per ground is fair and reasonable.

2.4. Hence, the present appeal by the Revenue raising the following substantial questions of law:

(i) Whether on the facts and circumstances of the case the Tribunal was right in dismissing the Department's appeal on the ground that the proceedings initiated under Section 263 of the Act had been dropped in the case of one of the co-owners? and

(ii) Whether on the facts and circumstances of the case the Tribunal was right in dismissing the Department's appeal without going into the merits of the case?

3. The learned counsel for the Revenue contends that the Tribunal erred in deciding the issue without going into the merits of the case, merely on the basis of the co-owner's case being dropped; and that the Registered valuer had taken a sale of ½ ground of land in 1995 and worked backwards, whereas the assessing officer had taken the value shown by one of the co-owners in respect of the neighbouring land, and therefore, the order of the assessing officer needs to be restored.

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4.1. Admittedly, the assessing officer proceeded to adopt the value of the land disclosed by one of the co-owners for wealth tax proceedings for the assessment year 1992-93 and the said property is located at quite a distance from the impugned property and further that property was valued for the purpose of wealth-tax and not on the basis of fair market value. Moreover, no reason has been attributed against the assessee by the assessing officer, for not accepting the value adopted by the assessee, based on the report of an approved valuer.

4.2. That apart, the Tribunal, while passing the order under appeal, had also taken into consideration the order of the Commissioner of Income Tax initiated under Section 263 of the Income Tax Act, in and by which, the proposal to revise the assessment in the case of other co-owner was dropped, finding that there was no justification to reject the value adopted by the assessee. The Tribunal, in the light of the decision in Jaswant Rai v. CWT, [1977] 107 ITR 477, held that differential treatment cannot be met out to another co-owner while making the assessment of the same property or while valuing the same property.

4.3. The learned counsel for the Revenue is not in a position to satisfy us, as to how the Commissioner of Income Tax dropped the proceedings initiated under Section 263 of the Income Tax Act qua the co-owner, who had also adopted the same value for the property as the petitioner herein.

5. It is trite that if during the same assessment year the same quantity of wealth in possession of one co-sharer is subjected to a lower rate of taxation, it would be highly improper to burden a similarly situated co-sharer with a higher rate of tax. If such an action on the part of the assessing authorities is sanctioned, it would militate against the principle of equality of laws enshrined in article 14 of the Constitution, vide Jaswant Rai v. CWT, [1977] 107 ITR 477.

6. Applying the ratio laid down in Jaswant Rai v. CWT, referred supra, to the facts of the case on hand would lead to the firm conclusion that the assessee, who is also a co-owner of the property, is entitled to the benefit enjoyed by the other co-owner, whose valuation of the same property, at the same rate as that of the assessee, was accepted by the Commissioner of Income Tax and recorded in the order under appeal by the Tribunal.

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Finding no reason to interfere with the order of the Tribunal, this appeal is dismissed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To:

1. The Assistant Registrar,
   Income-tax Appellate Tribunal,
   Rajaji Bhavan, Besant Nagar,
   Chennai 600 090 (five copies with records)

2. The Commissioner of Income-tax (Appeals)-V,
   Chennai.

3. The Deputy Commissioner of Income Tax, Special Range I
   Chennai.

4. The Commissioner of Income Tax,
Chennai.

1 cc to M/s. Pushya Sitaraman, Standing Counsel for Income Tax,
Sr. 49864

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